IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 79 C 69, et al.
	)	
JOHN WAYNE GACY,	)	
	)	
Defendant.	)	

FILED
2022 JAN -5 AM 9:39
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY

NOTICE OF MOTION

To: Kim Foxx, Cook County State's Attorney, 2650 S. California Ave., 12th Floor, Chicago, IL 60608.

PLEASE TAKE NOTICE that on January 10, 2022, at 9:30 a.m., I shall appear via Zoom before Presiding Judge Reddick or any judge sitting in her stead in Courtroom 101 of the Cook County Criminal Courthouse, 2650 S. California, Chicago, IL 60608, and shall present the attached **Motion for Return of Property**, a copy of which is hereby served upon you. The Zoom Meeting ID is 969 4477 8955, the Password is 030385, and the Tel. No. is (312) 626-6799.

Steven W. Becker

Steven W. Becker
Law Office of Steven W. Becker LLC
205 N. Michigan Ave., Suite 810
Chicago, Illinois 60601
(312) 396-4116
swbeckerlaw@gmail.com
Cook County # 56574
Counsel for Sherry Marino

PROOF OF SERVICE

I, Steven W. Becker, pursuant to Section 1-109 of the Code of Civil Procedure, certify that on January 5, 2022, I caused the attached motion to be filed in the Clerk's Office and to be delivered by personal service to the State's Attorney's Office at the addresses listed above.

Steven W. Becker

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 79 C 69, et al.
	)	
JOHN WAYNE GACY,	)	
	)	
Defendant.	)	

FILED
2022 JAN -5 AM 9:36
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY

MOTION FOR RETURN OF PROPERTY

NOW COMES the Movant, Sherry Marino, by and through her counsel, the Law Office of Steven W. Becker LLC, pursuant to 725 ILCS 5/108-11, and hereby moves for the return of the mandible and maxilla of Body Number 14, who was subsequently identified as her son, Michael Marino, which were obtained pursuant to warrant dated December 22, 1978, in the above matter, deliberately severed from the remainder of the skull by the authorities, and never returned to Mrs. Marino in violation of law, based upon the following grounds:

General Law

1. 725 ILCS 5/108-11 provides that "[t]he court before which the instruments, articles or things are returned shall enter an order providing for their custody pending further proceedings."
2. In particular, section 108-11 permits the court to release property seized during a search to the owners or to those entitled to possession. *People ex rel. Carey v. Covelli*, 61 Ill. 2d 394, 402 (1975); *People v. Canaday*, 49 Ill. 2d 416, 423 (1971).
3. A motion under section 108-11 is the appropriate remedy for seeking the return of

property obtained pursuant to a search warrant. *Adams Apple Distributing Co. v. Zagel*, 152 Ill. App. 3d 157, 161-62 (1st Dist. 1986).

4. Very recently, the Illinois Supreme Court clarified that sections 108-10 and 108-11 relate specifically to items obtained pursuant to search warrant. *See People v. McCavitt*, 2021 IL 125550, ¶¶ 80-82 (noting that the statute contemplates a motion and a hearing).

John Wayne Gacy

5. John Wayne Gacy was charged with murdering thirty-three teenage boys and burying the majority of them in the crawl space under his home in a suburb just outside of Chicago. *People v. Gacy*, 103 Ill. 2d 1, 18 (1984). He was arrested on December 21, 1978. *See* TERRY SULLIVAN, KILLER CLOWN: THE JOHN WAYNE GACY MURDERS 147-61 (2d ed. 2013). Gacy was convicted by a jury and sentenced to death. *Gacy*, 103 Ill. 2d at 18. After a series of unsuccessful appeals in state and federal court, Gacy was executed at the Stateville Correctional Center in 1994. SULLIVAN, *supra*, at 386.

6. Since 2011, the above case has been officially reopened due to the activities of Cook County Sheriff Tom Dart, who exhumed various jaws in an effort to identify previously unidentified bodies in the Gacy case. *See* Tori Telfer, *Unearthing Justice: How One Lawyer is Trying to Solve a John Wayne Gacy Murder Mystery*, 107/3 AMERICAN BAR ASSOCIATION JOURNAL 32, 41 (June/July 2021).

Search Warrant

7. Multiple search warrants were issued in connection with the Gacy case, including a warrant approved on December 22, 1978, at 1:35 p.m. that authorized the search of Gacy's home for additional victims. (C. 5658, 5965-5966)

8. On December 27, 1978, Body Number 14 was discovered in Gacy's crawl space. *See* Death Certificate of Michael Marino, which is attached hereto as Exhibit A.

The Identification of Michael Marino as Body Number 14

9. Michael Marino disappeared on October 24, 1976. *See* DAVID NELSON, BOYS ENTER THE HOUSE: THE VICTIMS OF JOHN WAYNE GACY AND THE LIVES THEY LEFT BEHIND 285 (2022). Michael was 14 years' old at the time, and it was believed that he was going to meet up with a friend from the neighborhood, Kenneth Parker. *See* Judith Valente, *DNA Revives Mystery of Gacy Victim: Mother 'Always Knew' Remains Weren't Her Son's. So Where is He?*, USA TODAY, July 5, 2013, at 4A.

10. Mrs. Marino spent the next three years searching all over Chicago for Michael, putting herself in harm's way, entering into dangerous establishments and drug houses looking for possible clues as to Michael's whereabouts. *Id.*

11. Shortly after Gacy's arrest in December 1978, Mrs. Marino, in accord with the public request by the authorities, provided Michael's dental records to the Chicago Police Department to aid them in trying to identify the numerous bodies found in Gacy's crawl space. *See* Telfer, *supra*, at 35. Soon thereafter, Mrs. Marino was informed by the police that Michael was not a Gacy victim. *Id.*

12. At the end of March 1980, however, Mrs. Marino received the shocking news that Michael had, in fact, been identified as a Gacy victim: "The dreaded news came in March 1980. Two police officers arrived at her door and told her that authorities had made 'an awfully big mistake' in treating Michael as a runaway. Police said Michael had been identified as one of the bodies discovered months earlier in Gacy's house. They said a

previously unidentified body found lying next to Michael was that of a 16-year-old friend who had accompanied Michael to the arcade." Valente, *supra*, at 4A. Mrs. Marino recounts her reaction, "I fell to my knees, just passed out." *Id.*

13. The press story ran as follows:

> Chicago (AP) – Using dental charts and X-ray records, authorities have identified the bodies of two more apparent victims of John W. Gacy, Jr., the convicted killer of 33 young men and boys.
>
> That left nine bodies unidentified.
>
> Cook County Medical Examiner Dr. Robert Stein said Saturday the two were identified as Kenneth Parker, 16, and Michael Marino, 14, both of Chicago. Their remains were dug up from the crawl space beneath Gacy's home in Norwood Park Township, northwest of Chicago.
>
> The boys were friends who both disappeared on Oct. 24, 1976, and were reported missing by their parents the next day. They were last seen on Chicago's North Side near where investigators said Gacy picked up many of his victims.
>
> The two youths were found in a common grave, and investigators said they may have been killed at the same time.
>
> Gacy, 38, was convicted two weeks ago and sentenced to die on June 2.

Associated Press, *2 Apparent Victims of Gacy Identified*, ST. JOSEPH GAZETTE, Mar. 31, 1980, n.p.

Exhumation of Body Number 14

14. In May 2011, Mrs. Marino retained counsel for the purpose of determining whether the

Cook County Medical Examiner's office properly identified her son, Michael, as one of John Wayne Gacy's victims.

15. Counsel eventually obtained the Pathological Report and Protocol, as well as the Skeletal Analysis, for Cook County Medical Examiner Case No. 1329, which was also identified as "Body #14," which latter designation referred to the order in which the bodies were discovered during the excavations conducted in Gacy's crawl space. *See* Pathological Report and Protocol, #1329 of December, 1978, dated Oct. 15, 1979; 79-21, Human Skeleton from Cook County, Illinois, dated Jan. 2, 1980 (hereinafter Skeletal Analysis). Body Number 14 was the decedent whom the authorities had identified as Michael Marino.

16. The Skeletal Analysis revealed a discrepancy between the description of the decedent's teeth and Michael Marino's teeth as represented on his personal dental charts, which Mrs. Marino had provided.

17. In this regard, the Skeletal Analysis clearly stated that "[t]here is no antemortem tooth loss . . . ." Skeletal Analysis at 2. Yet, Michael Marino's charts showed that tooth number 15, which is commonly referred to as the second permanent molar on the upper left jaw, was either removed or unerupted as of March 1976, the date of Michael's last dental appointment. Moreover, an independent dental expert stated that such a molar would have been extremely unlikely to erupt during the seven months intervening before Michael disappeared and that the absence of this molar, which typically erupts between the ages of 12 and 13, constitutes antemortem tooth loss.

18. Two additional discrepancies between the decedent identified as Body Number 14 and

Michael were pointed out by Mrs. Marino. First, Body Number 14 had a possible broken collar bone; Michael did not. Secondly, the Skeletal Analysis noted that the decedent was Caucasian "with some slight to moderate Mongoloid (probably American Indian) admixture." Skeletal Analysis at 3, 6. Michael, however, was of pure Italian ancestry.

19. Based upon these inconsistencies, Mrs. Marino filed a Petition for Exhumation in September 2011.

20. On October 6, 2011, the Honorable Rita Novak granted the Petition for Exhumation. *See In the Matter of Michael Marino*, No. 11 CH 32380, Order, Oct. 6, 2011, at 1. According to the Order, the Cook County Medical Examiner's Office was afforded the opportunity to be present and to collect DNA samples from the body. *Id.*

21. On September 5, 2012, the exhumation of Body Number 14 was carried out at the Queen of Heaven Cemetery in Hillside, Illinois. No one from the Medical Examiner's Office appeared to observe the exhumation or to take samples. Telfer, *supra*, at 38.

22. On October 24, 2012, the DNA results came back indicating that Sherry Marino is not the biological mother of the decedent, Body Number 14. *Id.* In fact, the lab report indicated that the profiles did not match at five loci along the chromosome. *Id.*

Missing Jaws of Gacy Victims

23. One of the biggest surprises experienced during the exhumation of Body Number 14 was that the mandible and maxilla were missing – the top half of the skull was in the casket, but the bottom half, containing the teeth that were used for the identification, was entirely absent. *See* Steven W. Becker, *Post-Conviction DNA Testing, Actual Innocence, and Cold Cases: A Practitioner's Guide to Freeing the Innocent, Exhuming the Past, and*

Resurrecting the Truth – Making a Case for Seeking Justice over Finality, 2016 THE GLOBAL COMMUNITY: YEARBOOK OF INTERNATIONAL LAW AND JURISPRUDENCE 15, 40. Of course, having the ability to inspect and test the teeth, especially since they were so critical to the identification of Body Number 14 on account of the discrepancies between the autopsy report and Michael's dental records, was critical.

24. In an effort to locate what happened to the jaw of Body Number 14, counsel initiated a Freedom of Information Act request to try to find documents tracing the chain of custody of the mandible and maxilla and identifying their current location. *Id.*

25. After counsel initiated an administrative appeal because of the Cook County Board of Commissioner's unsatisfactory response, the Office of the President of the Cook County Board of Commissioners finally provided the following information to the Attorney General's Public Access Bureau:

> Ms. Marik conducted an extensive search of the Medical Examiner's Office for records responsive to the request. Prior to 2009, Ms. Marik said that the mandibles and maxillas of John Wayne Gacy's [33] victims were safely and securely stored in a "bone room" at the Medical Examiner's Office. The bones were labeled with the unique case numbers that each decedent receives upon intake. Despite her efforts, however, Ms. Marik said that she was unable to locate any records or correspondence pertaining to the decision to retain the mandible and maxilla bones of John Wayne Gacy's victims.
>
> In 2009, the Medical Examiner's Office buried the mandibles and maxillas at Homewood Memorial Gardens cemetery; however, Ms. Marik was also unable

to locate any records or correspondence pertaining to the decision to bury or to the burial itself.

Letter from Jeff Fronczak, Special Assistant, Office of the President, Cook County Board of Commissioners, to Steve Silverman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (dated May 14, 2013), at 1-2, which is attached hereto as Exhibit B.

26. Upon information and belief, Dr. Edward Pavlik, the forensic odontologist who examined the teeth of the victims in the Gacy case, ordered the jaws of the Gacy victims removed, which were thereafter stored at the Medical Examiner's Office.

Failure to Return Jaws to Gacy Victims' Families Illegal

27. In Illinois, the right of possession of a dead body ordinarily belongs to the next of kin. *See Leno v. St. Joseph Hospital*, 55 Ill. 2d 114, 117 (1973); *Hearon v. City of Chicago*, 157 Ill. App. 3d 633, 637 (1st Dist. 1987). The right of the family to possession of a decedent's remains is akin to a property right. *Mensinger v. O'Hara*, 189 Ill. App. 48, 53-54 (1st Dist. 1914). Furthermore, this right extends to "the whole body, even though necessarily disfigured." *Palenzke v. Bruning*, 98 Ill. App. 644, 651 (1st Dist. 1901).

28. At the time of the burial of Body Number 14, it was illegal under Illinois law not to return the whole body, including the mandible and maxilla, to the decedent's family for burial. *See* Ill. Rev. Stat. (1977), Ch. 31, Sec. 10.7 (now 55 ILCS 5/3-3021) (declaring public policy with respect to the return of a decedent's body following the coroner's investigation); *People v. Jordan*, 103 Ill. 2d 192, 209, 212 (1984) (holding that criminal

defendant's due process right to examine evidence was not violated where the State "returned the jaw to the family pursuant to a statutory mandate").

29. To date, the State has still not returned the mandible and maxilla of Body Number 14 to Mrs. Marino, despite the fact that the authorities identified Body Number 14 as being Michael Marino more than 40 years ago and persist in maintaining the accuracy of their identification.

30. As one appellate court opined on such an egregious violation: "But no one – coroner, nor doctor, nor undertaker – had the right to remove parts of the body and, without the parents' consent, throw them into a privy vault. Such conduct violates every instinct of propriety, and could not fail to outrage the feelings of the kindred of the deceased." *Palenzke*, 98 Ill. App. at 651.

Exhumation of Body Number 15

31. In a further effort to locate Michael Marino and in light of multiple factors detailed below, counsel turned his investigation to Body Number 15, who was identified as Kenneth Parker, Michael Marino's friend. *See* Becker, *supra*, at 41.

32. First of all, Body Number 14 and Body Number 15 were buried only inches apart in a common grave in Gacy's crawl space. Given the horrible conditions in the crawl space for the evidence technicians, it was possible that body parts were commingling and confused. *Id.*

33. Second, in reviewing the respective autopsy reports for Body Number 14 and Body Number 15, counsel identified a discrepancy in the clothing on the two bodies. The

clothing that Michael Marino was last seen wearing was more consistent with that listed for Body Number 15, not with that listed for Body Number 14. *Id.* at 41-42.

34. Thirdly, a potential ground for confusion between the two bodies could be identified in the list of possible "Exclusions" contained in Dr. Clyde Snow's Skeletal Analysis for both Body Number 14 and Body Number 15. *Id.* The possible "Exclusions" refer to the antemortem x-rays of seven missing persons that were available for comparison at the time of the examination. *Id.* Six of the seven individuals were excluded from being either Body Number 14 or Body Number 15. *Id.* Yet, one individual named "Meyers" was "Not Excluded" by Dr. Snow from being either Body Number 14 or Body Number 15. *Id.*

35. On account of this uncertainty, on November 20, 2014, counsel filed a Petition for Exhumation with respect to Body Number 15. *Id.* The Parker family was notified of the hearing but declined to participate. *Id.* On December 10, 2014, after hearing argument, the Honorable Rita Novak granted the second Petition for Exhumation. *See In the Matter of Michael Marino*, No. 11 CH 32380, Order, dated Dec. 10, 2014, at 1. According to the Order, the Cook County Medical Examiner's Office was again afforded the opportunity to be present and to collect DNA samples from the body. *Id.*

36. On August 26, 2015, the exhumation of Body Number 15 was carried out at the Rosehill Cemetery in Chicago. *See* Becker, *supra*, at 42. Again, no one from the Medical Examiner's Office appeared to observe the exhumation or to take samples. *Id.*

37. In March 2016, DNA results came back from the laboratory indicating that Sherry Marino is not the mother of the decedent known as Body Number 15: "The remains of

'Body No. 15' were exhumed from Rosehill Cemetery in August, and the results of DNA testing paid for by the family of suspected Gacy victim Michael Marino came back in March. The DNA sample taken from the skull of the remains showed Marino's mother, Sherry, was not a biological match . . . ." Patrick M. O'Connell, *DNA Test Clouds Original ID in Gacy Case: Mother, Lawyer Insist Michael Marino Wasn't Serial Killer Victim: Cops Disagree*, CHICAGO TRIBUNE, April 18, 2016, at 4.

38. Although these results do not exclude the possibility that Body Number 15 is Kenneth Parker (because the Parkers did not provide their DNA for comparison), they nonetheless demonstrate that Body Number 15 is not Michael Marino.

Correspondence from Senator Percy

39. More recently, Mrs. Marino located official correspondence in her personal files from Illinois Senator Charles Percy dating back to October 1980. *See* Telfer, *supra*, at 41. In response to her doubts at the time about the accuracy of the identification of her son as Body Number 14, Senator Percy wrote Mrs. Marino that, according to none other than lead Gacy prosecutor William Kunkle, the identification of Michael Marino was made "despite some initial uncertainty due to a discrepancy in dental charts." *Id.* This is the first written confirmation from the prosecution that there were, in fact, inconsistencies in the dental charts used to identify Body Number 14, which was precisely what counsel discovered in comparing the Skeletal Analysis with Michael's personal dental charts.

40. In addition, this admission by ASA Kunkle, as relayed by Senator Percy, directly contradicts the later assertions of Dr. Edward Pavlik, who claimed that he was "100 percent certain" about his identification of Body Number 14 as Michael Marino because

he was "a perfectionist." *See* Nicole Weisensee Egan, *After 40 Years of Doubt, DNA Tests Prove Victim of Serial Killer John Wayne Gacy is Not Her Missing Son, Mother Says*, PEOPLE, Apr. 6, 2016, *at* http://www.people.com/article/sherry-marino-michael-serial-killer-john-wayne-gacy-victim (last visited Apr. 6, 2016).

David Cram's Dig in Gacy's Crawl Space in August 1977

41. Since that time, proof introduced as evidence at Gacy's own trial by the State has been discovered that seems to unequivocally demonstrate not only that Michael Marino was misidentified as Body Number 14 but that Kenneth Parker was likewise misidentified as Body Number 15, both whom went missing on October 24, 1976.

42. At trial, David Cram, one of Gacy's longtime employees, was questioned on direct examination by ASA Terry Sullivan about digging trenches in Gacy's crawl space in August 1977. *See* NELSON, *supra*, at 285.

43. "For four or five hours, Cram dug an eight- to ten-foot-long trench about knee-deep from the sump pump toward the front, or north, side of the house. Then he turned east and dug for seven to seven and a half more feet." *Id.*

44. "Based on these measurements, there is no conceivable way that if Michael Marino and Kenneth Parker were murdered and buried in October 1976, David Cram did not disturb or discover their remains that day in August 1977. Even if these measurements were off by a foot or two, he most likely would have dug through some portion of them." *Id.*

45. Accordingly, as summarized by author David Nelson in his new book on Gacy's victims, "[e]ither Marino and Parker were alive nearly a year after police believed they were murdered, or these bodies are not Marino, or not Marino *and* Parker, and they were

different, unknown victims killed sometime after August 1977." *Id.* (emphasis in original).

Homewood Memorial Gardens Cemetery

46. It is now almost a decade since Mrs. Marino obtained DNA results following the exhumation of Body Number 14. The Cook County Sheriff's Office has refused to acknowledge her independent DNA results, will not withdraw the death certificate for Michael Marino, and has frustrated all of Mrs. Marino's attempts to have her DNA entered into NamUs (the National Missing and Unidentified Persons System), which is a law-enforcement database, in the quest to match her DNA with an unidentified decedent across the United States who might be her son. *See* Telfer, *supra*, at 41.
47. The Gacy case is now officially reopened and active because of the Sheriff's initiative in exhuming and attempting to identify previously unidentified Gacy victims. *Id.*
48. As a result of the Sheriff's refusal to acknowledge the independent DNA results, Body Number 14 is still officially identified as Michael Marino. Accordingly, Mrs. Marino, as Michael's mother, is legally entitled to his whole body – including the mandible and maxilla. *See* 55 ILCS 5/3-3021.
49. Toward this end, counsel recently visited the Homewood Memorial Gardens Cemetery. On December 7, 2021, a representative advised counsel that he should contact the Cook County Sheriff's Office to learn if the Sheriff had custody of the mandible and maxilla of Body Number 14 since the Sheriff's Office conducted extensive digs at the cemetery in 2011 with respect to the jaws of the Gacy victims.

50. On December 7, 2021, counsel left a voicemail message for Lieutenant Jason Moran at the Cook County Sheriff's Office seeking information on the custody of the mandible and maxilla of Body Number 14. Lieutenant Moran did not respond.

51. On December 20, 2021, counsel left a second voicemail message for Lieutenant Moran again seeking said information. Lieutenant Moran has still not responded.

52. On December 22, 2021, counsel submitted a FOIA request to the Cook County Sheriff's Office seeking specified information relating to the custody and location of the mandible and maxilla of Body Number 14.

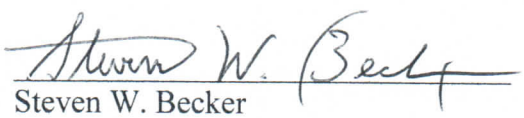
53. On January 3, 2022, the Cook County Sheriff's Office requested an extension of time to answer counsel's FOIA request.

54. Mrs. Marino seeks possession of the mandible and maxilla of Body Number 14, *inter alia*, to conduct forensic DNA testing on the teeth of Body Number 14 in light of new technologies that were unavailable to her at the time of the initial exhumation.

WHEREFORE, for the foregoing reasons, the Movant, Sherry Marino, respectfully requests that the Court:

1. Schedule a hearing on her motion for return of property;
2. Permit appropriate discovery prior thereto, including subpoenas;
3. Grant her motion for return of property;
4. Order the State to provide her with the mandible and maxilla of Body Number 14;
5. Order the State to provide her with chain-of-custody documentation; and
6. For such further relief as the Court deems just and proper.

Respectfully submitted,



Steven W. Becker
Attorney for Sherry Marino

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Cook County # 56574

EXHIBIT A

STATE OF ILLINOIS

STATE FILE NUMBER

REGISTRATION DISTRICT NO. 16.0

REGISTERED NUMBER

MEDICAL EXAMINER'S CERTIFICATE OF DEATH

1. DECEASED – NAME (FIRST, MIDDLE, LAST): Michael MARINO
2. SEX: MALE
3. DATE OF DEATH (MONTH, DAY, YEAR): December 27, 1978
4a. RACE – (WHITE, BLACK, AMERICAN INDIAN, ETC.) (SPECIFY): WHITE
4b. ORIGIN OR DESCENT: ITALIAN
5a. AGE – LAST BIRTHDAY (YRS): 18
5b. UNDER 1 YEAR – MOS. / DAYS:
5c. UNDER 1 DAY – HOURS / MIN.:
6. DATE OF BIRTH (MO., DAY, YEAR): 2/8/62
7a. COUNTY OF DEATH: Cook
7b. CITY, TOWN, TWP. OR ROAD DISTRICT NUMBER: Norwood Park Twp
7c. HOSPITAL OR OTHER INSTITUTION – NAME (IF NOT IN EITHER, GIVE STREET AND NUMBER): 8213 Summerdale Scene
7d. IF HOSP., OR INST., INDICATE DOA, OP., EMER., AM., INPATIENT (SPECIFY): DOA
8. STATE OF BIRTH (IF NOT IN U.S.A. NAME COUNTRY): ILLINOIS
9. CITIZEN OF WHAT COUNTRY: U.S.A.
10. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (SPECIFY): NEVER MARRIED
11. NAME OF SURVIVING SPOUSE (MAIDEN NAME, IF WIFE): —
12. SOCIAL SECURITY NUMBER: UNAVAILABLE
13a. USUAL OCCUPATION: Student
13b. KIND OF BUSINESS OR INDUSTRY: School
13c. U.S. WAR VETERAN (YES-NO): No
13d. WAR OR DATES OF SERVICE: —
14a. RESIDENCE STREET AND NUMBER: [redacted]
14b. CITY, TOWN, TWP. OR ROAD DISTRICT NO.: CHGO
14c. INSIDE CITY (YES/NO): YES
14d. COUNTY: Cook
14e. STATE: ILL.
15. FATHER – NAME (FIRST, MIDDLE, LAST): MARIO MARINO
16. MOTHER – MAIDEN NAME (FIRST, MIDDLE, LAST): SHERRY SANTINI
17a. INFORMANT'S SIGNATURE: Sherry Marino
17b. RELATIONSHIP: MOTHER
17c. MAILING ADDRESS (STREET AND NO. OR R. F. D., CITY OR TOWN, STATE, ZIP): [redacted]

18. DEATH WAS CAUSED BY (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)

PART I. IMMEDIATE CAUSE
(a) Asphyxia.
DUE TO OR AS A CONSEQUENCE OF
(b) Strangulation.
DUE TO OR AS A CONSEQUENCE OF
(c)

CONDITIONS, IF ANY, WHICH GIVE RISE TO IMMEDIATE CAUSE (a) STATING THE UNDERLYING CAUSE LAST

APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH:

PART II. OTHER SIGNIFICANT CONDITIONS – CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO CAUSE GIVEN IN PART I (a).

19a. AUTOPSY (YES-NO):
19b. IF YES, WERE FINDINGS CONSIDERED IN DETERMINING CAUSE OF DEATH:

20a. ACCIDENT, SUICIDE, HOMICIDE OR UNDETERMINED (SPECIFY): HOMICIDE
20b. DATE OF INJURY (MONTH, DAY, YEAR): Found December 17, 1978
20c. HOUR: UNKNOWN M.
20d. HOW INJURY OCCURRED (ENTER NATURE OF INJURY MENTIONED IN PART I OR PART II, ITEM 19): STRANGULATION - ASPHYXIA
20e. INJURY AT WORK (YES/NO): NO
20f. PLACE OF INJURY – AT HOME, FARM, STREET, FACTORY, OFFICE BUILDING, ETC. (SPECIFY): 8213 Summerdale
20g. LOCATION (CITY, VIL. OR TOWN OR TWP. OR RD. DIST. NO., COUNTY, STATE): Norwood Park Twp, Cook, Illinois

21a. I CERTIFY THAT IN MY OPINION BASED UPON MY INVESTIGATION AND/OR THE INQUISITION, THIS DEATH OCCURRED ON THE DATE, AT THE PLACE AND DUE TO THE CAUSE(S) STATED, AND THAT .....
21b. THE DECEDENT WAS PRONOUNCED DEAD ON (MONTH, DAY, YEAR): December 27, 1978
21c. AT: 3:18 P.M.

MEDICAL EXAMINER'S SIGNATURE
22. M.D. M.D.
23. DATE SIGNED (MONTH, DAY, YEAR): April 10, 1980

24a. BURIAL, CREMATION, REMOVAL (SPECIFY): BURIAL
24b. CEMETERY OR CREMATORY NAME: QUEEN of HEAVEN
24c. LOCATION – CITY OR TOWN, STATE: Hillside, ILL.
24d. DATE (MONTH, DAY, YEAR): SAT. Apr. 12, 1980

FUNERAL HOME NAME
25a. JOHN RAGO SONS 5744 W. NORTH AVE., CHGO, ILL. 60639
STREET AND NUMBER OR R.F.D. CITY OR TOWN STATE ZIP

FUNERAL DIRECTOR'S SIGNATURE
25b. Joseph P. Rago Jr
25c. FUNERAL DIRECTOR'S ILLINOIS LICENSE NUMBER: 7785

LOCAL REGISTRAR'S SIGNATURE
26a. JOSEPH E. DUFFY REGISTRAR
26b. DATE REC'D. BY LOCAL REGISTRAR (MONTH, DAY, YEAR): April 10, 1980

R202C (REV. 1/78) Illinois Department of Public Health – Office of Vital Records (BASED ON 1978 U.S. STANDARD CERTIFICATE)

I HEREBY CERTIFY THAT the foregoing is a true and correct copy of the death record for the decedent named in item 1 and that this record was established and filed in my office in accordance with the provisions of the Illinois statutes relating to the registration of births, stillbirths and deaths.

EXHIBIT B

OFFICE OF THE PRESIDENT
JEFF FRONCZAK
SPECIAL ASSISTANT
69 W. Washington St., Ste. 3500 • Chicago, Illinois 60602 • (312) 603-2476

TONI PRECKWINKLE
PRESIDENT
Cook County Board of Commissioners

EARLEAN COLLINS
1st District

ROBERT STEELE
2nd District

JERRY BUTLER
3rd District

STANLEY MOORE
4th District

DEBORAH SIMS
5th District

JOAN PATRICIA MURPHY
6th District

JESUS G. GARCIA
7th District

EDWIN REYES
8th District

PETER N. SILVESTRI
9th District

BRIDGET GAINER
10th District

JOHN P. DALEY
11th District

JOHN A. FRITCHEY
12th District

LARRY SUFFREDIN
13th District

GREGG GOSLIN
14th District

TIMOTHY O. SCHNEIDER
15th District

JEFFREY R. TOBOLSKI
16th District

ELIZABETH ANN DOODY GORMAN
17th District

May 14, 2013

Steve Silverman
Assistant Attorney General
Public Access Bureau
Office of the Attorney General
100 West Randolph Street
Chicago, Illinois 60601

RE: FOIA Request for Review – 2013 PAC 23307

Dear Mr. Silverman,

The Office of the President of the Cook County Board of Commissioners is in receipt of your letters, dated February 11, 2013 and March 22, 2013, in which you requested further information regarding our response to Becker Stephenson LLC's request for records under the Freedom of Information Act (the "Act"). Specifically, you asked us to clarify whether the Office of the Medical Examiner is in possession of any records responsive to Becker Stephenson's request. If so, you asked that we provide a written explanation of the reasons why those records were not provided to the requester, including a detailed factual basis for any FOIA exemption(s) that we wish to assert. We address your questions in the paragraphs below.

On November 30, 2012, Becker Stephenson LLC submitted a request for

> [a]ny and all documentation concerning the current whereabouts of the mandibles and maxillas, including teeth, of all of John Wayne Gacy's victims; the chain of custody of the mandibles and maxillas, including teeth, starting from the moment the Medical Examiner decided to retain the bones up to and including their recent disinterment and reinterment; and the cataloging and identification markings of the respective jaws.

Upon receipt, Mary Marik, Supervisor of the Medical Records Department for the Medical Examiner's Office, forwarded the request to Dr. Stephen Cina, Chief Medical Examiner, and to personnel within the President's Office. Dr. Cina directed Ms. Marik to "exhaust all internal options" in an attempt to locate records responsive to the request. On December 11, 2012, the President's Office extended the deadline for our response to this request, pursuant to section 3(e)(vii) of the Act.

Ms. Marik conducted an extensive search of the Medical Examiner's Office for records responsive to the request. Prior to 2009, Ms. Marik said that the mandibles and maxillas of John Wayne Gacy's victims were safely and securely stored in a "bone room" at the Medical Examiner's Office. The bones were labeled with the unique case numbers that each decedent receives upon intake. Despite her efforts, however, Ms. Marik said that she was unable to locate any records or correspondence pertaining to the decision to retain the mandible and maxilla bones of John Wayne Gacy's victims.

In 2009, the Medical Examiner's Office buried the mandibles and maxillas at Homewood Memorial Gardens cemetery; however, Ms. Marik was also unable to locate any records or correspondence pertaining to the decision to bury or to the burial itself. In 2011, the Cook County Sheriff's Office obtained a court order to exhume the unidentified mandibles and maxillas and take custody.

On December 18, 2013, our office responded to Becker Stephenson's request by writing that

> [T]he mandibles and maxillas of John Wayne Gacy's victims were stored at the Office of the Medical Examiner until 2009, when they were buried. In the summer of 2011, the Sheriff's Office exhumed the eight (8) unidentified mandibles and maxillas and sent them to the University of North Texas (UNT) for DNA work. The other mandibles and maxillas remain buried. With respect to cataloging and identification markings, please note that each decedent receives his or her own unique case number upon intake at the Medical Examiner's Office.

In our response, we did not explicitly state that we were not in possession of any records responsive to the request. Rather, we provided the information relayed to us by the Medical Examiner's Office. To be clear, the Office of the Medical Examiner has indicated that they are not in possession of any records responsive to Becker Stephenson's request for information, dated November 30, 2012. The Medical Examiner's Office has conducted an exhaustive search for any records responsive to the request. The County maintains its position that there are no records responsive to Becker Stephenson's November 30, 2012 request for information.

Please be advised that we are in possession of dental charts for each of the unknown cases. We would be happy to provide Becker Stephenson with copies of these records if they would find them helpful.

If you have any questions, feel free to contact me.

Sincerely,

Jeff Fronczak
Special Assistant
Office of the President
Cook County Board of Commissioners